

OGC/LEGL Review Completed.

Page Denied

STAT

38 APR 1983

PS
I

98TH CONGRESS
1ST SESSION

H. R. 2643

To amend title 18 of the United States Code with respect to extradition, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 1983

Mr. HUGHES (for himself and Mr. SAWYER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18 of the United States Code with respect to extradition, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Extradition Act of 1983".

4 SEC. 2. Chapter 209 of title 18 of the United States
5 Code is amended—

6 (1) by striking out section 3181 and inserting in
7 lieu thereof the following:

1 **"§ 3181. Payment of fees and costs**

2 "All costs or expenses incurred in any proceeding under
3 this chapter in apprehending, securing, and transmitting a
4 fugitive shall be paid by the demanding authority.";

5 (2) in section 3182, by adding at the end the fol-
6 lowing: "An agent appointed as provided in this sec-
7 tion who receives the fugitive into custody is empow-
8 ered to transport the fugitive to the State or Territory
9 from which the fugitive fled.";

10 (3) by striking out "or the Panama Canal Zone"
11 in the first sentence of section 3182;

12 (4) by striking out section 3184 and all that fol-
13 lows through section 3195; and

14 (5) so that the chapter heading and the table of
15 sections at the beginning of the chapter read as fol-
16 lows:

17 **"CHAPTER 209—INTERSTATE RENDITION**

"Sec.

"3181. Payment of fees and costs.

"3182. Fugitives from State or Territory to State, District or Territory.

"3183. Fugitives from State, Territory, or possession into extraterritorial jurisdic-
tion of the United States.".

18 **SEC. 3.** Title 18 of the United States Code is amended
19 by inserting after chapter 209 the following new chapter:

20 **"CHAPTER 210—INTERNATIONAL EXTRADITION**

"Sec.

"3191. General statement of requirements for extradition.

"3192. Complaint and preliminary proceedings.

"3193. Waiver of hearing.

"3194. Hearing and order.

“3195. Appeal from determination after hearing.

“3196. Surrender of a person to foreign state after hearing.

“3197. Cooperation with transit through United States for foreign extradition.

“3198. Receipt of a person from a foreign state.

“3199. Definitions and general provisions for chapter.

1 **“§ 3191. General statement of requirements for extradition**

2 “The United States may extradite a person to a foreign
3 state in accordance with this chapter only if—

4 “(1) there is an applicable treaty concerning ex-
5 tradition between the United States and such foreign
6 state;

7 “(2) the foreign state requests extradition in ac-
8 cordance with the terms of that treaty; and

9 “(3) the appropriate court issues an order under
10 this chapter that such person is extraditable.

11 **“§ 3192. Complaint and preliminary proceedings**

12 “(a)(1) The United States district court for the district in
13 which the person sought to be extradited is found may issue
14 an order in accordance with this chapter that such person is
15 extraditable, upon a complaint filed by the Attorney General.

16 “(2) If the Attorney General has previously sought an
17 order that a person is extraditable under this chapter with
18 respect to a specific extradition request of a foreign state the
19 Attorney General may not file another complaint under this
20 section based upon the same factual allegations as a previous
21 complaint, unless the Attorney General shows good cause for
22 filing another complaint.

1 “(3) If extradition of an individual is requested by more
2 than one foreign state, whether for the same or different of-
3 fenses, the Secretary of State may in the discretion of the
4 Secretary of State determine which request to honor after
5 consideration of all relevant factors, including—

6 “(A) those set forth in an applicable treaty con-
7 cerning extradition;

8 “(B) the nationality of the individual;

9 “(C) the state in which the offense is alleged to
10 have occurred; and

11 “(D) if different offenses are involved, which of-
12 fense is punishable by the most severe penalty, and if
13 the penalties are substantially equal the order in which
14 the requests were received.

15 “(b) A complaint under this section shall—

16 “(1) be made under oath or affirmation;

17 “(2) specify the offense for which extradition is
18 sought;

19 “(3) contain any matter not otherwise required by
20 this chapter but required by the applicable treaty con-
21 cerning extradition; and

22 “(4) either—

23 “(A) be accompanied by—

24 “(i) a copy of the request of the foreign
25 state for extradition; and

5

1 “(ii) the evidence and documents re-
2 quired by the applicable treaty concerning
3 extradition; or

4 “(B) contain—

5 “(i) information sufficient to identify the
6 person sought;

7 “(ii) a statement—

8 “(I) of the essential factual allega-
9 tions of conduct constituting the offense
10 that the person sought is believed to
11 have committed; or

12 “(II) that a judicial document
13 authorizing the arrest or detention of
14 such person on account of accusation or
15 conviction of a crime is outstanding in
16 the foreign state seeking extradition;
17 and

18 “(iii) a description of the circumstances
19 justifying such person’s arrest.

20 “(c) The Attorney General may file a complaint under
21 this chapter in the United States District Court for the Dis-
22 trict of Columbia if the Attorney General does not know
23 where the person sought may be found. When the person is
24 found, the matter shall be transferred to the United States

1 district court to which the person arrested is taken under
2 subsection (d) of this section.

3 “(d)(1) Upon the filing of the complaint under this sec-
4 tion, the court shall issue a warrant for the arrest of the
5 person sought, or, if the Attorney General so requests, a
6 summons to such person to appear at an extradition hearing
7 under this chapter. The warrant or summons shall be execut-
8 ed and returned in the manner prescribed for the execution
9 and return of a warrant or summons, as the case may be,
10 under the Federal Rules of Criminal Procedure. A person
11 arrested under this section shall be taken without unneces-
12 sary delay before the nearest available United States district
13 court for further proceedings under this chapter.

14 “(2) During the first ten days following the arrest of a
15 person under this section, the court shall order such person
16 detained and not order release of such person under section
17 3199(c) of this title, pending the disposition of the complaint
18 under this chapter, unless the Government is ready to pro-
19 ceed under this chapter before the end of such ten-day period
20 or such person shows by the preponderance of the evidence
21 that if so released—

22 “(A) such person does not present a substantial
23 risk of flight;

24 “(B) such person does not present a danger to any
25 other person or the community; and

1 “(C) no relationship with a foreign state will be
2 jeopardized with respect to a treaty concerning extradi-
3 tion.

4 “(3) The ten-day period referred to in paragraph (2) of
5 this subsection may be extended for successive five-day peri-
6 ods upon the application of the Government and a showing of
7 good cause.

8 “(e) The court shall order the release, pending the ex-
9 tradition hearing, of a person arrested under this section if
10 there has not been filed with the court before the end of sixty
11 days after the arrest of such person the evidence and docu-
12 ments required by the applicable treaty concerning extradi-
13 tion or notice that such evidence and documents have been
14 received by the Department of State and will promptly be
15 transmitted to the court. The court may extend such sixty-
16 day period for successive periods of fifteen days each upon a
17 showing of good cause by the Attorney General with respect
18 to each such extension. In any case, if the applicable treaty
19 concerning extradition requires such release before the end of
20 the period otherwise specified by this subsection, the court
21 shall order such release in accordance with such treaty.

22 **“§ 3193. Waiver of hearing**

23 “(a) A person against whom a complaint is filed under
24 this section may, with the consent of the Attorney General,
25 waive the requirements of this chapter for a hearing by in-

1 forming the court that such person consents to removal to the
2 foreign state requesting extradition. Such a waiver may not
3 be revoked unless the court determines that an extraordinary
4 change of circumstances warrants such revocation.

5 “(b) The court shall—

6 “(1) inform a person making a waiver under this
7 section of such person’s right to representation by
8 counsel, including counsel appointed without cost to
9 such person if such person is financially unable to
10 obtain counsel; and

11 “(2) inquire of such person and determine whether
12 such waiver is—

13 “(A) voluntary and not the result of threat or
14 other improper inducement; and

15 “(B) given with full knowledge of its
16 legal consequences.

17 “(c) If the court determines the waiver is one described
18 in subsection (b)(2) (A) and (B) of this section, the court shall
19 order the person making such waiver extraditable and certify
20 a transcript of the court’s proceeding in the matter to the
21 Secretary of State. The Attorney General shall notify the
22 foreign state requesting extradition of the order of extradition
23 and the time limitation under section 3196(c) of this title on
24 detention of the person sought. The Attorney General shall,
25 except as otherwise provided by this chapter, surrender the

1 person so ordered extraditable to the custody of an agent of
2 the foreign state requesting extradition.

3 **“§ 3194. Hearing and order**

4 “(a) The court shall, as soon as practicable after arrest
5 or summons of the person sought to be extradited, hold a
6 hearing to determine issues of law and fact with respect to a
7 complaint filed under section 3192 of this title unless such
8 hearing is waived under section 3193 of this title.

9 “(b)(1) At a hearing under this section, the person
10 sought to be extradited has the right—

11 “(A) to representation by counsel, including coun-
12 sel appointed without cost to such person if such
13 person is financially unable to obtain counsel;

14 “(B) to confront and cross-examine witnesses; and

15 “(C) to introduce evidence with respect to the
16 issues before the court.

17 “(2) The guilt or innocence of the person sought to be
18 extradited of the charges with respect to which extradition is
19 sought is not an issue before the court.

20 “(c) The court shall inform the person sought to be ex-
21 tradited of the purpose of the hearing and of the rights de-
22 scribed in subsection (b) of this section.

23 “(d)(1) Except as otherwise provided in this chapter, the
24 court shall order a person extraditable after a hearing under
25 this section if the court finds—

1 “(A) probable cause to believe that the person
2 before the court is the person sought;

3 “(B)(i) probable cause to believe that the person
4 before the court committed the offense for which such
5 person is sought; or

6 “(ii) the evidence presented is sufficient to support
7 extradition under the provisions of the applicable treaty
8 concerning extradition; and

9 “(C) the conduct upon which the request for ex-
10 tradition is based—

11 “(i) would be punishable under the laws of—

12 “(I) the United States;

13 “(II) the majority of the States of the
14 United States; or

15 “(III) the State where the fugitive is
16 found; and

17 “(ii)(I) at least one such offense is punishable
18 by a term of more than one year’s imprisonment,
19 in the case of a person before the court who is
20 sought for trial; or

21 “(II) more than one hundred and eighty days
22 of imprisonment remain to be served with respect
23 to such offense, in the case of a person before the
24 court who is sought for imprisonment.

1 “(2) The court shall not order a person extraditable
2 after a hearing under this section if the court finds—

3 “(A) such person is charged with an offense with
4 respect to which the limitations provided by the appli-
5 cable treaty concerning extradition, or, if such treaty
6 provides none, the limitations of the law of the pros-
7 ecuting foreign state, on commencement of prosecution
8 have run;

9 “(B) the applicable treaty concerning extradition
10 provides an applicable defense against extradition; or

11 “(C) the person has established by the preponder-
12 ance of the evidence that any offense for which such
13 person may be subject to prosecution or punishment if
14 extradited is a political offense.

15 “(e)(1)(A) Upon motion made by the person sought to be
16 extradited or the Attorney General, the United States district
17 court may order the determination of any issue under subsec-
18 tion (d)(2)(C) of this section by a judge of such court.

19 “(B) No issue under subsection (d)(2)(C) of this section
20 shall be determined by the court and no evidence shall be
21 received with respect to such issue unless and until the court
22 determines the person sought is otherwise extraditable.

23 “(2) For the purposes of this section, a political offense
24 does not include—

1 “(A) an offense within the scope of the Conven-
2 tion for the Suppression of Unlawful Seizure of Air-
3 craft (signed at The Hague on December 16, 1970);

4 “(B) an offense within the scope of the Conven-
5 tion for the Suppression of Unlawful Acts Against the
6 Safety of Civil Aviation (signed at Montreal on Sep-
7 tember 23, 1971);

8 “(C) a serious offense involving an attack against
9 the life, physical integrity, or liberty of internationally
10 protected persons (as defined in section 1116 of this
11 title), including diplomatic agents;

12 “(D) an offense with respect to which a multilat-
13 eral treaty obligates the United States to either extra-
14 dite or prosecute a person accused of the offense;

15 “(E) an offense that consists of the manufacture,
16 importation, distribution, or sale of narcotics or danger-
17 ous drugs; or

18 “(F) an attempt or conspiracy to commit an of-
19 fense described in subparagraphs (A) through (E) of
20 this paragraph, or participation as an accomplice of a
21 person who commits, attempts, or conspires to commit
22 such an offense.

23 “(3) For the purposes of this section, a political offense,
24 except in extraordinary circumstances, does not include—

1 “(A) an offense that consists of homicide, assault
2 with intent to commit serious bodily injury, kidnaping,
3 the taking of a hostage, or a serious unlawful
4 detention;

5 “(B) an offense involving the use of a firearm (as
6 such term is defined in section 921 of this title) if such
7 use endangers a person other than the offender;

8 “(C) rape; or

9 “(D) an attempt or conspiracy to commit an of-
10 fense described in subparagraph (A), (B), or (C) of this
11 paragraph, or participation as an accomplice of a
12 person who commits, attempts, or conspires to commit
13 such an offense.

14 “(4)(A) Any issue as to whether the foreign state is
15 seeking extradition of a person for the purpose of prosecuting
16 or punishing the person because of such person’s political
17 opinions, race, religion, or nationality shall be determined by
18 the Secretary of State in the discretion of the Secretary of
19 State.

20 “(B) Any issue as to whether the extradition of a person
21 to a foreign state would be incompatible with humanitarian
22 considerations shall be determined by the Secretary of State
23 in the discretion of the Secretary of State.

24 “(f) The court shall state the reasons for its findings as
25 to each charge or conviction, and certify—

1 “(1) a transcript of its proceedings in the case of
2 an order of extraditability; or

3 “(2) such report as the court considers appropriate
4 in other cases;
5 to the Secretary of State.

6 “(g)(1) Documents at a hearing under this section may
7 be authenticated as provided—

8 “(A) in an applicable treaty;

9 “(B) in the Federal Rules of Evidence for pro-
10 ceedings to which such Rules apply; or

11 “(C) by the applicable law of the foreign state,
12 and authentication under this subparagraph may be es-
13 tablished conclusively by a showing that—

14 “(i) a judge, magistrate, or other appropriate
15 officer of the foreign state has signed a certifica-
16 tion to that effect; and

17 “(ii) a diplomatic or consular officer of the
18 United States who is assigned or accredited to the
19 foreign state, or a diplomatic or consular officer of
20 the foreign state who is assigned or accredited to
21 the United States, has certified the signature and
22 position of the judge, magistrate, or other officer.

23 “(2) An affidavit by an appropriate official of the De-
24 partment of State is admissible in a hearing under this section

1 as evidence of the existence of a treaty relationship between
2 the United States and a foreign state.

3 “(3) The court may in making its decision consider hear-
4 say evidence and properly certified documents in a hearing
5 under this section.

6 “(h) If the applicable treaty relating to extradition re-
7 quires that such evidence be presented on behalf of the for-
8 eign state as would justify ordering a trial of the person if the
9 offense were committed in the United States, the requirement
10 is satisfied by evidence establishing probable cause to believe
11 that the offense was committed and that the person sought
12 committed that offense.

13 “(i) The court shall, upon petition after reasonable
14 notice to the Secretary of State by a person ordered extradit-
15 able under this section, dismiss the complaint against that
16 person and dissolve the order of extraditability if an order for
17 the surrender of that person to the requesting state has not
18 been made by the Secretary of State by the end of forty-five
19 days (excluding any time during which extradition is delayed
20 by judicial proceedings) after the Secretary of State receives
21 the certified transcript of the proceedings from the court,
22 unless the Attorney General shows good cause why such pe-
23 tition should not be granted.

1 **“§ 3195. Appeal from determination after hearing**

2 “(a)(1) Any party may appeal in accordance with the
3 Federal Rules of Appellate Procedure applicable to criminal
4 cases the determination of the court after a hearing under
5 section 3194 of this title.

6 “(2) Such appeal shall be heard as soon as practicable
7 after the filing of notice of appeal. Pending determination of
8 such appeal, the district court shall stay the operation of the
9 court’s final order with respect to the extradition of the
10 person found extraditable or the dismissal of the complaint.

11 “(3) Pending disposition of an appeal under this
12 section—

13 “(A) by either party in the case of a person who
14 has been found extraditable on any charge, the court
15 shall order such person detained and shall not release
16 such person under section 3199(c) unless such person
17 sought for extradition shows by a preponderance of the
18 evidence that—

19 “(i) if so released—

20 “(I) such person does not present a sub-
21 stantial risk of flight;

22 “(II) such person does not present a
23 danger to any other person or the communi-
24 ty; and

1 “(III) no relationship with a foreign
2 state will be jeopardized with respect to a
3 treaty concerning extradition; and

4 “(ii) the probability of success of such appeal
5 is great; and

6 “(B) by the Government in the case of a person
7 who has not been found extraditable on any charge,
8 the court shall order the release under section 3199(c)
9 of a person sought to be extradited unless the Govern-
10 ment shows by the preponderance of the evidence the
11 opposite of any of the things required to be shown by a
12 person sought by extradition under subparagraph (A) of
13 this section and that the probability of the success of
14 such appeal is great.

15 “(4) The appeal of a case in which the person sought to
16 be extradited is not released shall be heard promptly.

17 “(b)(1) No court shall have jurisdiction to review in any
18 proceeding, other than an appeal proceeding under this sec-
19 tion, the extraditability of a person appealing under this sec-
20 tion until the conclusion of such appeal.

21 “(2) No court shall have jurisdiction to entertain a peti-
22 tion for habeas corpus or a proceeding for other review with
23 respect to a finding of extraditability after a hearing under
24 section 3194 of this title if such finding has been upheld in
25 any previous appeal or an opportunity to appeal was not

1 taken, unless the court finds that the grounds for the petition
2 or other review could not previously have been presented by
3 such habeas corpus or other proceeding or, in the case of an
4 appeal not taken, the court finds good cause existed for not
5 taking the appeal.

6 **“§ 3196. Surrender of a person to a foreign state after**
7 **hearing**

8 “(a) If a person is ordered extraditable after a hearing
9 under this chapter the Secretary of State, in such Secretary’s
10 discretion, may order the surrender of the person (even if
11 such person is a national of the United States, unless such
12 surrender is expressly forbidden by the applicable treaty con-
13 cerning extradition or the laws of the United States) to the
14 custody of an agent of the foreign state requesting extradi-
15 tion, and may condition that surrender upon any conditions
16 such Secretary considers necessary to effectuate the purposes
17 of the applicable treaty concerning extradition or the interest
18 of justice.

19 “(b) The Secretary of State, upon ordering or denying
20 surrender absolutely or conditionally under this section, shall
21 notify the person sought, the diplomatic representative of the
22 foreign state, the Attorney General, and the court that or-
23 dered the person extraditable. If surrender is ordered under
24 this section, the Secretary of State shall also notify the diplo-
25 matic representative of the foreign state of the time limitation

1 under subsection (c) of this section on detention of the person
2 sought. The Attorney General shall, except as otherwise pro-
3 vided by this chapter, surrender to the custody of an agent of
4 the foreign state requesting extradition the person so ordered
5 surrendered.

6 “(c) The court shall, upon petition after reasonable
7 notice to the Secretary of State by a person ordered extradit-
8 able under this chapter, dismiss the complaint against that
9 person and dissolve the order of extraditability if that person
10 has not been removed from the United States by the end of
11 thirty days after—

12 “(1) surrender has been ordered by the Secretary
13 of State in the case of a person ordered extraditable
14 after a hearing under this section; or

15 “(2) certification of transcript under section 3193
16 of this title in the case of a person making a waiver
17 under such section;

18 unless the Attorney General shows good cause why such pe-
19 tition should not be granted.

20 **“§ 3197. Cooperation with transit through United States**
21 **for foreign extradition**

22 “The United States may cooperate in the transit
23 through the territory of the United States of a person in cus-
24 tody for extradition from one foreign state to another foreign
25 state. The Attorney General may hold such person in custody

1 for not more than ten days until arrangements are made for
2 the continuation of such person's transit.

3 **“§ 3198. Receipt of a person from a foreign state**

4 “(a) The Attorney General shall appoint an agent to
5 receive, from a foreign state, custody of a person accused of a
6 Federal, State, or local offense. Such agent shall have the
7 authority of a United States marshal, and shall convey such
8 person to the Federal or State jurisdiction that sought such
9 person's return.

10 “(b) If a foreign state delivers custody of a person ac-
11 cused of a Federal, State, or local offense to an agent of the
12 United States on condition that such person be returned to
13 such foreign state at the end of criminal proceedings in the
14 United States the Attorney General shall hold such person in
15 custody pending the end of such proceedings and shall then
16 surrender such person to an agent of such foreign state unless
17 the foreign state declines to accept such person.

18 **“§ 3199. Definitions and general provisions for chapter**

19 “(a) As used in this chapter—

20 “(1) the term ‘foreign state’—

21 “(A) used in other than a geographic sense,
22 means the government of a foreign state; and

23 “(B) used in a geographic sense, includes all
24 territory under the jurisdiction of a foreign state,
25 and includes—

1 “(i) any colony, dependency, or con-
2 stituent part of such foreign state; and

3 “(ii) the air space, territorial waters,
4 and vessels and aircraft registered in such
5 foreign state;

6 “(2) the term ‘treaty’ means a treaty, convention,
7 or other international agreement that is in force after
8 advice and consent of the Senate;

9 “(3) the term ‘State’ includes the District of Co-
10 lumbia, the Commonwealth of Puerto Rico, the Virgin
11 Islands, Guam, and the Northern Mariana Islands; and

12 “(4) the term ‘United States district court’ in-
13 cludes the District Court of Guam, the District Court
14 of the Virgin Islands, and the District Court of the
15 Northern Mariana Islands, and Guam, the Virgin Is-
16 lands, and the Northern Mariana Islands are, respec-
17 tively, the districts for such District Courts.

18 “(b) The court may order a person found extraditable
19 under this chapter held until surrendered to an agent of the
20 foreign state, or until the Secretary of State declines to order
21 such person’s surrender.

22 “(c)(1) A person arrested or otherwise held or detained
23 under this chapter shall to the extent practicable, be confined
24 in a place other than one used for the confinement of persons
25 convicted of crime. A person arrested or otherwise held or

1 detained in connection with any proceeding under this chap-
2 ter shall be treated in accordance with this subsection and
3 chapter 207 of this title, except sections 3141, 3144,
4 3146(a), 3146(b), 3148, and 3150. Proceedings under this
5 chapter shall be deemed criminal proceedings for the pur-
6 poses of this application of chapter 207 of this title and the
7 release of a person under this subsection shall be deemed a
8 release under section 3146(a) for the purposes of such appli-
9 cation.

10 “(2) Any person arrested or otherwise held or detained
11 in connection with any proceeding under this chapter shall, at
12 such person’s appearance before a judicial officer, be ordered
13 released pending a proceeding under this chapter on personal
14 recognizance or upon the execution of an unsecured appear-
15 ance bond in an amount specified by the judicial officer,
16 unless the officer determines that at a hearing the Govern-
17 ment has shown by the preponderance of the evidence that
18 such a release will not assure the appearance of the person as
19 required, assure the safety of another person or the communi-
20 ty, or carry out the obligations of the United States under the
21 applicable treaty concerning extradition. If the judicial officer
22 so determines, the judicial officer may, either in lieu of or in
23 addition to such methods of release, order such person de-
24 tained after a hearing on a motion for detention under para-
25 graph (10) of this subsection or impose any of or any combi-

1 nation of the following conditions of release which will give
2 the required assurances and carry out such obligations:

3 “(A) Place the accused person in the custody of a
4 designated person or organization agreeing to supervise
5 such accused person.

6 “(B) Place restrictions on the travel, association,
7 or place of abode of the person during the period of
8 release.

9 “(C) Require the execution of an appearance bond
10 in a specified amount and the deposit in the registry of
11 the court, in cash or other security as directed, of a
12 sum not to exceed 10 per centum of the amount of the
13 bond, such deposit to be returned upon the perform-
14 ance of the conditions of release.

15 “(D) Require the execution of a bail bond with
16 sufficient solvent sureties, or the deposit of cash in lieu
17 thereof.

18 “(E) Impose any other condition deemed reason-
19 ably necessary to give the required assurances and
20 carry out such obligations, including a condition requir-
21 ing that the person return to custody after specified
22 hours.

23 “(3) In determining which conditions of release will give
24 the required assurances and carry out the obligations of the

1 United States as required, the judicial officer shall, on the
2 basis of available information, take into account—

3 “(A) the nature and circumstances of the offense
4 charged, and the weight of the evidence against the
5 person accused;

6 “(B) such person’s family and local ties, financial
7 resources, character, and mental condition;

8 “(C) the length of such person’s residence in the
9 community;

10 “(D) such person’s record of convictions;

11 “(E) such person’s record of appearance at court
12 proceedings or of flight to avoid prosecution or failure
13 to appear at court proceedings;

14 “(F) whether such person is employed or is at-
15 tending an educational institution;

16 “(G) whether such person is lawfully within the
17 United States;

18 “(H) the existence of any other requests for the
19 extradition of such person other than the one with re-
20 spect to which release is sought; and

21 “(I) whether such person is currently on proba-
22 tion, parole, or mandatory release under State or Fed-
23 eral law.

1 “(4) It shall be a condition of any release under this
2 subsection that the person released not commit any Federal,
3 State, or local crime.

4 “(5) The Attorney General may appeal from a decision
5 to release under this subsection to, and seek the revocation of
6 such release or a change in the conditions imposed with re-
7 spect to such release in, the court having appellate jurisdic-
8 tion over the court in which such decision was made. Any
9 order so appealed shall be affirmed if the order is supported
10 by the proceedings below. If the order is not so supported,
11 the court may, with or without additional evidence, modify
12 the decision appealed. The appeal shall be determined
13 promptly.

14 “(6) The attorney for the Government may make a
15 motion for the revocation of the release of a person charged
16 with violating a condition of release under this subsection.
17 Upon such motion a judicial officer may issue a warrant for
18 the arrest of such person and the person shall be brought or
19 appear before a judicial officer in the district in which the
20 arrest under section 3192 was ordered. Such judicial officer
21 shall order revocation of release and detention of such person
22 if such judicial officer finds—

23 “(A) there is clear and convincing evidence that
24 such person has violated any such condition of such re-
25 lease; and

1 “(B) based on the factors set forth in paragraph
2 (3) of this subsection, there is no condition or combina-
3 tion of conditions of release that will give the required
4 assurances and carry out the obligations described in
5 paragraph (2) of this subsection.

6 “(7) If the judicial officer finds in a proceeding under
7 paragraph (6) of this subsection that there are conditions of
8 release that will give the required assurances and carry out
9 the obligations described in paragraph (2) of this subsection,
10 the judicial officer shall release the person in accordance with
11 paragraph (2) of this subsection.

12 “(8) Violation of a condition of release under this sub-
13 section constitutes a contempt of court.

14 “(9) Whoever willfully fails to appear as required after
15 release under this subsection shall be fined not more than
16 \$10,000 and imprisoned not more than ten years.

17 “(10)(A) The attorney for the Government may make a
18 motion to detain a person not otherwise held who is awaiting
19 disposition of proceedings under this chapter.

20 “(B) The court shall order such detention after a hear-
21 ing if the Government shows by a preponderance of the evi-
22 dence that if such person is not detained—

23 “(i) such person presents a substantial risk of
24 flight;

1 “(ii) such person presents a danger to any other
2 person or the community; or

3 “(iii) a relationship with a foreign state will be
4 jeopardized with respect to a treaty concerning extradi-
5 tion.

6 “(11) At a hearing under this subsection, the person
7 sought to be detained has the rights a person sought to be
8 extradited has under subsection (b)(1) of section 3194 of this
9 title at a hearing under such section.

10 “(12) If the court orders detention under this subsection
11 the court shall set forth in writing its findings of fact and
12 conclusions of law not later than twenty-four hours after the
13 order for detention is entered.

14 “(13) Hearings under this subsection, and hearings
15 under section 3194 of this title, with respect to a person de-
16 tained under this subsection, shall, insofar as consistent with
17 the sound administration of justice, have priority over all
18 other proceedings before the court.

19 “(d) The court shall upon request appoint counsel as
20 provided in section 3006A of this title for cases to which such
21 section applies to represent a person whose extradition is
22 sought, with respect to whom a complaint is filed under this
23 chapter, and who is financially unable to obtain counsel.

24 “(e) All transportation costs, subsistence expenses, and
25 translation costs incurred in connection with the extradition

1 or return of a person at the request of the government of a
 2 foreign state, a State, or the United States shall be borne by
 3 the requesting government unless otherwise specified in the
 4 applicable treaty concerning extradition or, in the case of a
 5 request of the government of a foreign state, the Secretary of
 6 State directs otherwise.

7 “(f) The Supreme Court of the United States shall pre-
 8 scribe, from time to time, rules of practice and procedure
 9 with respect to any or all proceedings under this chapter.
 10 The Supreme Court may fix the dates when such rules shall
 11 take effect, except that such rules shall not take effect until
 12 they have been reported to Congress by the Chief Justice at
 13 or after the beginning of a regular session thereof but not
 14 later than the first day of May, and until the expiration of one
 15 hundred and eighty days after they have been thus
 16 reported.”.

17 SEC. 4. The table of chapters at the beginning of part II
 18 of title 18 of the United States Code is amended by striking
 19 out the item relating to chapter 209 and inserting in lieu
 20 thereof the following:

“209. Interstate Rendition 3181
 “210. International Extradition..... 3191.”.

21 SEC. 5. This Act shall take effect on the first day of the
 22 first month which begins on or after one hundred and eighty
 23 days after the date of the enactment of this Act, and shall

29

- 1 apply only with respect to extradition and rendition proceed-
- 2 ings commenced after such taking effect.

○

H 2238

CONGRESSIONAL RECORD — HOUSE

April 20, 1983

very hard to argue in fact that this Congress has done much to keep the alliance together in the last 15 years, and in many ways this country and this body have significantly weakened us.

Again, I simply report what people in NATO say to me, when you look at the threats of the KGB going where it will, when you look at the United States strangling its own allies and helping to pave the way for its opponents, and when you look at the amendments and the language on this floor, which I think, if read carefully by a French or British politician, would lead them to think they had better watch out.

The CHAIRMAN pro tempore. The time of the gentleman from Georgia (Mr. GINGRICH) has expired.

For what purpose does the gentleman from Wisconsin (Mr. ZABLOCKI) rise?

Mr. ZABLOCKI. Mr. Chairman, I rise for the purpose of making a unanimous consent request that, when the House reconvenes and the issue will be before the Committee of the Whole House on the State of the Union, we could have a vote on the pending amendment and all amendments thereto as the first order of business after a 10-minute debate on the part of both the gentleman from New York (Mr. CARNEY) and the gentleman from New York (Mr. SOLARZ). After that debate, then we would have a vote on the amendments.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Wisconsin?

Mr. BROOMFIELD. Mr. Chairman, reserving the right to object, may I ask, how does the gentleman propose to allocate the time?

Mr. ZABLOCKI. Mr. Chairman, if the gentleman will yield, it would be 10 minutes, 5 minutes for the opponents, and 5 minutes for the proponents of the amendment.

Mr. BROOMFIELD. Mr. Chairman, should the gentleman not suggest that he control the time on his side and I will control the time on this side here?

Mr. ZABLOCKI. It would be just about the same thing. If the gentleman wants it that way, the gentleman then will have 5 minutes of the time under his control.

Mr. CARNEY. Mr. Chairman, reserving the right to object, let me ask, that vote will take place tomorrow morning; is that correct?

Mr. ZABLOCKI. Tomorrow morning, when we return to the Committee of the Whole.

Mr. CARNEY. Immediately after a 10-minute dialog between the gentlemen, whoever controls the time?

Mr. ZABLOCKI. Right.

The CHAIRMAN pro tempore. Let the Chair clarify the request.

There will be a 10-minute debate on that amendment and all amendments thereto?

Mr. ZABLOCKI. That is correct, the Carney amendment, the Solarz

amendment, and all amendments thereto.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Wisconsin?

Mr. BROOMFIELD. Mr. Chairman, reserving the right to object, to clarify it, it is only on this particular amendment, Solarz?

Mr. ZABLOCKI. That is correct.

Mr. BROOMFIELD. Mr. Chairman, I withdraw my reservation of objection.

Mr. CARNEY. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The CHAIRMAN pro tempore. The request relates to the Carney amendment and all amendments thereto.

Mr. ZABLOCKI. Mr. Chairman, I move that the Committee do now rise. The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. JONES of Oklahoma) having assumed the chair, Mr. MURTHA, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the joint resolution (H.J. Res. 13) calling for a mutual and verifiable freeze on and reductions in nuclear weapons, had come to no resolution thereon.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 2065, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION APPROPRIATIONS

Mr. FROST, from the Committee on Rules, submitted a privileged report (Rept. No. 98-69) on the resolution (H. Res. 164) providing for the consideration of the bill (H.R. 2065) to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PERSONAL EXPLANATION

Mr. BETHUNE. Mr. Speaker, on Thursday, April 13, the House voted on the Levitas build-down amendment. I was present and voted for this amendment, although the computer did not record my vote for some reason. I was present on the floor at the time, as evidenced by my statement yielding my allocated time to Mr. HYDE, which is recorded on page H2029 of the CONGRESSIONAL RECORD.

EXTENDING TIME FOR CERTAIN SPECIAL ORDERS ON APRIL 26, 1983

Mr. RICHARDSON. Mr. Speaker, I ask unanimous consent that the special order speeches heretofore entered

into on April 26 by the gentleman from Iowa (Mr. BEDELL), the gentleman from New Jersey (Mr. TORRICELLI), and the gentleman from New York (Mr. WEISS) be extended to 1 hour each.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

□ 1215

EXTRADITION REFORM

(Mr. HUGHES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUGHES. Mr. Speaker, today I am introducing a bill to reform the laws of the United States with respect to extradition. This bill is similar to one I introduced in the 97th Congress, and that was reported by the House Committee on the Judiciary. Unfortunately, because of the press of other business during the last days of the 97th Congress, the bill was never considered by the full House.

Current extradition laws have been on the books for well over a century and have never been reviewed in a comprehensive fashion. According to both the Departments of Justice and State and leading practitioners and academics, these provisions are not adequate to deal with international crime control. The bill I am introducing is designed to facilitate reform in this area. The Subcommittee on Crime, which I chair, will hold two hearings on this bill, the first on April 28 and the second on May 5.

Increased ease and frequency of international travel has created international law problems that were unforeseen by the Congress of the 19th century. In recent years there has been a dramatic increase in the number of extradition requests made by countries for terrorists and for persons involved in drug trafficking. Improved international cooperation in prosecuting these types of offenses will very likely produce an even greater level of extradition demands in the future. The current procedures carry forward the anomalies of a bygone era. The inconveniences caused by these statutory deficiencies are relatively minor now, but are likely to cause major problems in the future.

In addition, the United States has undertaken negotiations and executed new extradition treaties that cannot be fully implemented under present law. The modernization of extradition procedure would be an important step forward in implementing these international obligations.

This bill has been developed with the assistance of the Departments of Justice and State and takes into account the suggestions of numerous witnesses at the hearings held last Congress by the Subcommittee on Crime. On the controversial and im-

April 20, 1983

CONGRESSIONAL RECORD — HOUSE

H 2239

portant issue of the definition of a "political offense," for which a person shall not be extraditable, the bill takes the approach suggested by the distinguished chairman of the House Committee on Foreign Affairs, Mr. ZABLOCKI. Among the suggestions made by the administration that have been incorporated are the following:

First, the bill requires that the Attorney General act as complainant in extradition matters. Under current law a foreign government—or someone claiming to be acting on behalf of such government—can initiate an extradition proceeding. The suggested change is recognized practice in virtually every other country. The proposed change will also avoid foreign policy problems that arise under current law.

Second, the bill permits an arrest warrant to be issued when the location of the fugitive is not known. This procedure will facilitate the efforts of law enforcement in locating persons sought for extradition, including suspected terrorists.

Third, the bill permits the commencement of extradition proceedings upon the issuance of a summons. This procedure is appropriate when the fugitive's location is known and the risk of flight is small. This procedural device will also save money.

Fourth, the bill sets standards for the release of a person sought for extradition. Under current law there is no explicit treatment of the question of when and whether to release a person sought for criminal activity by a foreign government. The absence of statutory criteria for use by the courts has produced some inappropriate results. The proposed release criteria take into account the dangerousness of the accused person, ties to the community, seriousness of the offense and the need to honor our treaty obligations.

Fifth, the bill permits fugitives to be temporarily extradited to the United States for trial and sentencing. This change will assist law enforcement by allowing timely disposition of violations of America law. Under current law we would have to wait until any foreign sentence was served.

Sixth, the bill establishes the right to counsel of accused persons and authorizes the appointment of counsel for indigents.

Seventh, the bill clarifies the requirements of double criminality. International law and our extradition treaties require that the offense that is the subject of the proceeding be an offense in both the requesting State and the United States. The bill clarifies current law by providing that the alleged offense must be an offense similar to a crime against a majority of the States; the United States; or the State in which the suspect is found. In addition, the bill requires that the offense be of a certain level of seriousness. Otherwise, extradition may not be justifiable, either from a practical or a legal standpoint.

Eighth, the bill permits either party to appeal the decision of the district court. Under current law neither side may appeal. As a practical matter, however, the defendant can obtain review through habeas corpus proceedings, and the Government by commencing a new proceeding. Direct appellate review will be more efficient.

Ninth, the bill clarifies or codifies current extradition practices and sets forth clear procedures for use by the courts and the Attorney General.

I believe that this bill strikes a good balance between the rights of the accused and the foreign policy and legal needs of the governments involved. I extend an invitation to interested parties to comment on this bill. Comments or requests to testify should be made to the Subcommittee on Crime, 207 Cannon House Office Building, Washington, D.C. 20515 or telephone: 202-225-1695.

□ 1740

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mrs. BOXER) is recognized for 5 minutes.

[Mrs. BOXER addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

TAX LIMITATION/BALANCED BUDGET CONSTITUTIONAL AMENDMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. CONABLE) is recognized for 30 minutes.

● Mr. CONABLE. Mr. Speaker, Congressman Ed JENKINS and I have today introduced the tax limitation/balanced budget amendment with 55 cosponsors. It is identical to Senate Joint Resolution 5 introduced in the Senate earlier this year, and is similar to the version which passed the Senate last year, omitting only the debt limitation amendment adopted on the Senate floor.

Federal spending as a share of GNP has increased from less than 20 percent in 1974 to more than 24 percent this year. Despite repeated forecasts of a balanced budget in recent years, deficits projected are now approaching \$200 million annually. Obviously, our present methods of restraining Government spending and budget deficits require substantial strengthening. This amendment would do that. The period required to implement the amendment would give us time to bring spending and taxing in line with the requirements. We intend to pursue this matter once again.

An explanation of the tax limitation/balanced budget amendment follow:

This is a consensus amendment which effectively accomplishes two objectives: (1) Limits the growth of federal outlays to no more than the growth of the national economy, and (2) Produces balanced budgets.

Section 1 of the amendment provides that the Congress shall adopt a fiscal statement in which total outlays (including both "on-budget" and "off-budget" items) are no greater than a stated level of receipts; only if three-fifths of the membership of each House agrees may outlays intentionally exceed income. This is the balanced budget part of the amendment.

Section 1 goes on to require that the President and the Congress ensure that actual outlays do not exceed the outlays set forth in the fiscal statement.

Section 2 limits total receipts in the fiscal statement, specifying that they shall not increase any faster than the average increase in national income for previous years (the average of previous years is used in order to avoid any forecasting problems). Receipts collected in excess of this limit would either be used to pay off the national debt or for a tax rebate. Only if a bill approving specific additional taxes has become law can this limit be exceeded.

Since Section 2 limits the growth of receipts and since Section 1 says that actual outlays can't exceed statement receipts, the effect of the two together is to limit the growth of total federal spending.

The amendment would produce balanced budgets over the business cycle. However, surpluses or deficits could occur in any given year. This is because, although actual outlays could be no greater than those allowed in the limit (i.e., statement receipts), actual receipts might fall below statement receipts during times of economic recession or be greater than statement receipts during times of economic boom.

Congress may waive the provisions of the amendment in time of war.

The amendment would take effect for the second fiscal year beginning after ratification. ●

THE NATIONAL DIVIDEND PLAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas (Mr. ALEXANDER) is recognized for 60 minutes.

● Mr. ALEXANDER. Mr. Speaker, today the American people face the prospect of a \$200 billion Federal deficit for the foreseeable future. Virtually all people having business interests say that unless these deficits are curbed we will face rising interest rates that will thwart the prospective economic recovery.

Many people are advancing new ideas on the subject of the deficit. One idea which is unique and worthy is the national dividend plan. This plan, which I will introduce in the near future, contains five basic provisions. They are as follows:

First, provide for placing all corporate income taxes collected by the Federal Government into a national dividend trust fund, which then would be distributed quarterly through private banks to all registered voters on an equal, Federal tax free basis;

Second, stipulate that the trust fund would be reduced by the amount of any Federal budget deficit;

Third, eliminates double tax on corporate dividends;

Fourth, retain the 46-percent ceiling on Federal corporate income taxes; and